

VZCZCXRO7809
RR RUEHCHI RUEHCN RUEHDT RUEHHM
DE RUEHJA #2156/01 3291049
ZNR UUUUU ZZH
R 241049Z NOV 08
FM AMEMBASSY JAKARTA
TO RUEHC/SECSTATE WASHDC 0793
INFO RUEAWJB/DEPT OF JUSTICE WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
RUEHHS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS
RUEHLMC/MILLENNIUM CHALLENGE CORP WASHINGTON DC
RUCPDO/DEPT OF COMMERCE WASHINGTON DC
RUEHKO/AMEMBASSY TOKYO 2762
RUEHBJ/AMEMBASSY BEIJING 5655
RUEHBY/AMEMBASSY CANBERRA 3327
RUEHUL/AMEMBASSY SEOUL 5160
RUEAIIA/CIA WASHDC

UNCLAS SECTION 01 OF 04 JAKARTA 002156

MCC FOR AMBASSADOR DANILOVICH AND MORFORD
MCC FOR MARIA LONGI
DEPT FOR EEB A/S SULLIVAN
DEPT FOR EAP DAS MARCIEL AND EB/IFD DAS DAVID NELSON
DEPT FOR EAP/MTS, EEB/IFD/OIA,
DEPT FOR INL SNYDER, CARLSON, ROESS
USAID/ODP FOR KAREN TURNER AND PETER DELP
USAID/ANE FOR STEPHAN SOLAT
TREASURY FOR A/S LOWERY
TREASURY/IA FOR RACHEL BAYLY
DEPT PASS USTR FOR SCHWAB
DEPT PASS USTR FOR ELENA BRYAN
DEPT PASS USTR FOR FRAN HEUGEL
DEPT PASS USTR FOR AUSTR BARBARA WEISEL
OMB FOR JACQUELINE STRASSER
DOJ FOR CRIM AAG SWARTZ
DOJ/OPDAT FOR ALEXANDRE, BERMAN, JOHNSON
DOJ/AFML FOR SAMUEL,
DOJ/PUBLIC INTEGRITY FOR AINSWORTH

SENSITIVE
SIPDIS

E.O. 12958: N/A
TAGS: [PGOV](#) [KJUS](#) [KCOR](#) [ID](#)
SUBJECT: Indonesian corruption prosecutors experience first-hand how
U.S. prosecutes corruption

JAKARTA 00002156 001.2 OF 004

11. (SBU) Summary: Twelve prosecutors from the Indonesian Attorney General's Office Anti-Corruption Task Force participated in an INL-funded two-week visit to the U.S. to learn how the U.S. investigates and prosecutes public corruption cases. The delegation, led by DOJ/OPDAT Resident Legal Advisor (RLA), met with federal and state prosecutors, FBI agents, judges, auditors, and other officials involved in investigating and prosecuting public corruption cases in Sacramento, Washington, D.C., and New York. During the visit, the Task Force identified short-term goals, such as producing annual reports and using lower-cost surveillance techniques, and longer-term priorities, such as the creation of an AGO Inspector General's Office. End summary.

AGO Anti-Corruption Task Force makes quick start

12. (U) The AGO inaugurated the Anti-Corruption Task Force in June 2008 in connection with U.S. Attorney General Mukasey's trip to Jakarta. Deputy Attorney General for Special Crimes Marwan Effendy led a competitive and more transparent selection process for the 50 Task Force members, assembling a task force of prosecutors from throughout the country. The Task Force is divided into four units - finance and banking, information technology, public services, and procurement. Since its inception, the Task Force has already initiated more than 20 cases, including the November arrest of three former and current Director Generals at the Ministry of Law. The

Task Force is leading a larger national effort to build smaller anti-corruption task forces in each province.

13. (U) As part of a \$750,000 INL-supported assistance project to support the new task force, the RLA and Econoff brought 12 members of the Task Force to the U.S. This trip was a golden opportunity for the Indonesian prosecutors, half of whom had never been outside Indonesia, let alone had a chance to see how other countries investigate and prosecute corruption cases. The group met with federal prosecutors from the Eastern District of California and the Southern and Eastern Districts of New York, DOJ prosecutors from the Public Integrity, Money Laundering, Foreign Corrupt Practices Act, Office of International Affairs, and Office of Inspector General in Washington, as well as state prosecutors in California. The trip focused on presenting corruption case studies and use of evidence, including listening to taped phone conversations used in a recent corruption case in California. The delegation also met with judges and other court personnel and observed live courtroom proceedings, including trial, arraignment, guilty plea, and sentencing proceedings. As Indonesian prosecutors are also responsible for investigation, the group met with FBI corruption investigators in Sacramento and New York, as well as California investigators, auditors, and election oversight officials. Overall, the group had more than thirty meetings, including one with over 50 people at the U.S.-Indonesia Society (USINDO) in Washington, which generated a Voice of America feature on the work of the AGO's Task Force.

Prosecutors identify lessons from trip for their mission

14. (SBU) The delegation learned more about different options for using recorded conversations as evidence in corruption cases. While wire-tapping equipment to intercept phone calls between two unsuspecting targets would be helpful, the U.S. prosecutors showed

JAKARTA 00002156 002.2 OF 004

the Indonesian prosecutors that simply recording phone calls made by cooperating witnesses to targets, as well as using body wires on informants or undercover law enforcement officials, are lower-cost options that can still generate powerfully incriminating recorded evidence. Following the visit, the delegation expressed interest in USG assistance in this area. The KPK has received wiretapping equipment through the MCC Threshold Program, but its prohibitive cost means that it is currently not an option for the AGO Task Force. Marwan Effendy, Deputy Attorney for Special Crimes and head of the Task Force, confirmed this surveillance equipment request during a meeting with RLA on November 17.

15. (U) The delegation also had an opportunity to discuss various procedural options, such as plea bargaining, that are not currently available in Indonesia. This exposure is relevant to the members of the Task Force as Indonesia's new draft Criminal Procedure Code, which is awaiting legislative approval, includes plea bargaining and various adversarial procedures.

16. (U) Wealth reports of elected and senior government officials are becoming a more widespread requirement in Indonesia, but not a common tool for corruption cases yet. The Senator Stevens corruption case, which was unfolding while the prosecutors were in the U.S., provided a real example of the ability to use wealth reporting requirements to combat corruption. Rather than contest whether or not the benefit an official received was formally a bribe, charges based on wealth reporting assess whether or not someone accurately filled out their financial disclosure statement.

17. (U) The delegation identified other longer-term lessons during the visit. For example, the delegation found the internal oversight conducted by the DOJ's Inspector General to be an effective institution for curbing internal problems, including internal corruption. Internal codes of ethics can help protect prosecutors from political influence and other corrupting influences. Following a meeting with the DOJ's Public Integrity Section, the head of the delegation said that he would recommend that the Task Force produce an annual report for Parliament and the public that documents the year's performance in a transparent manner. Overall, the delegation witnessed the far more decentralized prosecution service system

based on U.S. Attorney's Offices, compared to the Jakarta-centric approach in Indonesia.

Obstacles facing corruption prosecutions by the AGO

18. (U) Losses to the state is the central issue for Indonesian prosecutors to determine whether or not to investigate a corruption case. The delegation said that if an AGO investigation finds losses to the state in a possible corruption case, the case must be prosecuted. In the U.S., state losses is one factor, but does not automatically launch a corruption case. U.S. investigators and prosecutors - at both the federal and state levels - emphasized that misspent government funds, resulting in a loss to the state, was not necessarily corruption, but possibly negligence. In California, a negligence finding could result in fines or other punishment, but was differentiated from corruption. The California Controller's Office stressed the line between administrative error and criminal intent. For the Task Force's procurement sub-unit, this negligence-corruption distinction is critical. U.S. prosecutors

JAKARTA 00002156 003.2 OF 004

also noted that the Task Force could look beyond losses to the state and develop broader criteria for investigating corruption cases. For example, conflict of interest is one type of corruption that could not cause any losses to the state, but nevertheless may still reflect corruption.

19. (SBU) The Task Force noted political pressure within its decision-making structures from senior government officials and political parties. To pursue a high-level corruption case, the AGO must receive Presidential approval to investigate and arrest a suspect. For example, Task Force members noted the case of a Sumatra governor who they have investigated for bribery and misappropriation of funds. The investigation is stalled due to a lack of permission from more senior leaders, most likely the Attorney General and the Office of the President. During the visit, the group learned that at the DOJ, corruption investigations can begin without high-level approvals, and therefore when charging decisions need senior approval, meritorious cases are harder to derail because the evidence has already been gathered and the case has its own momentum. At a subsequent meeting in Jakarta, Deputy Attorney General Effendy informed the RLA that he is working to remove these obstacles.

110. (SBU) Good cooperation is critical for successful cases, yet Indonesian prosecutors are often hampered by lack of cooperation with other government agencies. For example, in the area of money laundering, the Financial Intelligence Unit (PPATK) is well regarded, yet the process is lengthy as information flows from PPATK to the police and finally to the AGO prosecutors. Similarly, in order to obtain bank records, the AGO must request the approval of the central bank governor, in contrast to U.S. prosecutors where no such approval is needed.

Healthy competition with Corruption Eradication Commission

111. (SBU) Task Force members repeatedly expressed frustration - and resentment - towards the Corruption Eradication Commission (KPK), the highly-regarded independent Indonesian government body founded in 2004 to investigate and prosecute high-profile corruption cases. The KPK has expanded authorities (e.g., wiretapping), higher salaries, more sympathetic ad hoc corruption judges, advanced surveillance equipment, and a smaller case load than the AGO's Anti-Corruption Task Force. The AGO and police typically investigate and prosecute 95% of all corruption cases whereas the KPK has only 5% of the overall case load and more discretion in terms which cases to pursue. Whereas the KPK focuses on cases over Rp 1 billion (\$100,000), the AGO must investigate all losses to the state. The KPK's different procedural rules and less political interference provide it a greater freedom to pursue corruption cases. Despite the tensions, however, Task Force members described the competition as largely positive and noted that the AGO and KPK closely coordinate on specific cases. Although there are some differences in their mandates, the KPK and AGO divide cases more on

a "first come, first served" basis.

Task Force chief continuing to move forward

¶12. (SBU) Anti-Corruption Task Force head Marwan Effendy said that

JAKARTA 00002156 004.2 OF 004

the Task Force will now establish small task forces in all thirty-nine High Prosecution Offices, during a November 17 meeting with the RLA.

Creating these parallel local task forces involving a total of 1,000 prosecutors Effendy is looking to institutionalize the Task Force's approach to combat corruption. Effendy thanked the RLA for leading the 12-prosecutor U.S. visit and suggested that Attorney General Supandji should visit the U.S. in February.

HUME